

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of)	
)	
Connect America Fund)	WC Docket No. 10-90
)	
A National Broadband Plan for Our Future)	GN Docket No. 09-51
)	
Establishing Just and Reasonable Rates for Local Exchange Carriers)	WC Docket No. 07-135
)	
High-Cost Universal Service Support)	WC Docket No. 05-337
)	
Developing an Unified Inter-carrier Compensation Regime)	CC Docket No. 01-92
)	
Federal-State Joint Board on Universal Service)	CC Docket No. 96-45
)	
Lifeline and Link-Up)	WC Docket No. 03-109
)	
Universal Service Reform – Mobility Fund)	WT Docket No. 10-208

To: Chief, Wireline Competition Bureau

OPPOSITION OF SPEEDCONNECT LLC TO PETITION FOR WAIVER

SpeedConnect LLC (“SpeedConnect”), by its attorney and pursuant to Sections 1.409 and 1.415 of the Commission’s Rules, hereby opposes the Petition for Waiver (“Petition”) filed on June 26, 2012 by CenturyLink in the above-captioned dockets to the extent it relates to SpeedConnect.¹ CenturyLink requests a waiver of Section 54.312(b) of the Commission’s Rules, which requires Connect America Fund (“CAF”) Phase I recipients to utilize funding solely to deploy broadband service to locations “shown as

¹ See *Public Notice*, “Wireline Competition Bureau Seeks Comment on CenturyLink Petition for Waiver of Certain High-Cost Universal Service Rules,” DA 12-1007 (rel. June 27, 2012) (“*Public Notice*”). The *Public Notice* established a July 12, 2012 deadline for the filing of responsive pleadings. Accordingly, this Opposition is timely filed.

unserved by fixed broadband on the then-current version of the National Broadband Map.² To the extent it seeks authority to expend CAF Phase I funding in areas that are served by SpeedConnect, the Petition should be dismissed for failure to meet the “high hurdle” confronting those seeking waiver of a Commission rule.³ Simply put, CenturyLink has failed to provide the Commission with any meaningful evidence that the limits on use of CAF Phase I funds – just recently reaffirmed by the Commission’s *Second Order on Reconsideration* in these proceedings⁴ -- should be tossed aside to permit CenturyLink to serve living units already served by SpeedConnect.

SpeedConnect and its affiliates currently provide fixed wireless broadband service to approximately 35,000 residential and business subscribers in Idaho, Iowa, Michigan, Montana, Nebraska, and South Dakota. Unlike most of the other wireless internet service providers (“WISPs”) that are the subject of the CenturyLink Petition, SpeedConnect does not rely on unlicensed spectrum to provide its fixed terrestrial broadband service. Rather, SpeedConnect’s service is provided over 2.5 GHz band Broadband Radio Service (“BRS”) and Educational Broadband Service (“EBS”) spectrum that is licensed by the Commission on an exclusive basis to SpeedConnect and its lessors. In some areas where SpeedConnect operates, it is the only provider of terrestrial fixed broadband service to the public. In many areas, however, SpeedConnect successfully competes directly with CenturyLink and/or other broadband providers, offering a range of broadband services at price points that consumers find compelling. SpeedConnect does not receive any federal

² 47 C.F.R. § 54.312(b)(2).

³ See *WAIT Radio v. FCC*, 418 F.2d 1153, 1157 (D.C. Cir. 1969), *aff’d*, 459 F.2d 1203 (1972), *cert. denied*, 93 S.Ct. 461 (1972).

⁴ See *Connect America Fund*, Second Order on Reconsideration, FCC 12-47, at ¶¶ 10-15 (rel. April 25, 2012) (“*USF/ICC Second Reconsideration Order*”).

universal service support for its broadband service offerings, and thus is an “unsubsidized competitor” for purpose of determining those areas eligible for CAF Phase I funding.⁵

As it relates to SpeedConnect, the Petition asks the Commission to waive recently-adopted Section 54.312(b) of the Rules and thereby permit CenturyLink to use CAF Phase I funding to serve 47 living units in a portion of Iowa where SpeedConnect already is providing broadband service.⁶ As a preliminary matter, it should be noted that although the Petition challenges the accuracy of the National Broadband Map with respect to the provision of broadband in certain other states, CenturyLink does not suggest that the National Broadband Map is deficient with respect to Iowa or that SpeedConnect is not serving the area of Iowa reflected by the National Broadband Map.⁷ In other words, CenturyLink is asking the Commission to permit the use of CAF Phase I

⁵ *Connect America Fund*, Report and Order and Further Notice of Proposed Rulemaking, 26 FCC Rcd 17663, 17701, ¶103 (2011) (“*USF/ICC Reform Order*”)(“all broadband buildout obligations for fixed broadband are conditioned on not spending the funds to serve customers in areas already served by an “unsubsidized competitor.” We define an unsubsidized competitor as a facilities-based provider of residential terrestrial fixed voice and broadband service that does not receive high-cost support.”)(citations omitted).

⁶ See Petition, Ex B.

⁷ SpeedConnect is only listed on Exhibit B of the Petition (which lists those competitors that CenturyLink asserts “impose unusually high retail prices or stringent data caps.”), and not on Exhibit C (which lists those licensees CenturyLink claims cannot serve the area reflected by the National Broadband Map). See Petition at 4 n. 8 and 9. CenturyLink provides no details regarding the location of the 47 living units it seeks authority to serve.

This is not the only instance in which CenturyLink makes broad claims inapplicable to the broadband marketplace in Iowa. Although CenturyLink contends that a failure to waive Section 54.312(b) “would disproportionately harm consumers across large swaths of states like Arizona, Colorado, Oregon, and Washington,” it makes no such claim with respect to the area it seeks to serve using CAF Phase I funding in Iowa. See Petition at 3.

funds for the overbuilding of areas in Iowa that it effectively concedes are already served by at least one fixed terrestrial broadband provider.⁸

To justify that dramatic departure from the rules governing the CAF Phase I program, CenturyLink cherry-picks limited anecdotal evidence to contend that those who provide fixed wireless service offer an inferior, overly-expensive service (conveniently ignoring that the *USF/ICC Second Reconsideration Order* rejected calls to permit CAF Phase I funding where the competitor's service is expensive or limited as to speed).⁹ Equally importantly, every "fact" CenturyLink advances with respect to WISP service quality relates to the perceived shortcomings of unlicensed spectrum. The Petition completely ignores the fact that SpeedConnect uses 2.5 GHz band exclusive use spectrum, and thus is immune to whatever limitations may be associated with unlicensed spectrum. For example, while CenturyLink asserts that those competitors listed on Exhibit B are subject to "capacity constraints" and an inability to share "the same congested spectrum resources,"¹⁰ the Petition does not contend, much less demonstrate, that SpeedConnect's 2.5 GHz exclusive use spectrum holdings are somehow insufficient

⁸ Although CenturyLink's attack on the accuracy of the National Broadband Map does not apply to SpeedConnect, SpeedConnect notes that the *USF/ICC Reform Order* specifically recognized that the Map may overstate the areas currently serviced by determined that reliance on the Map, "along with our requirement that carriers certify that the areas to which they intend to deploy are unserved to the best of each carrier's knowledge, is a reasonable and efficient means to identify areas that are, in fact, unserved, even if there might be other areas that are also unserved." *USF/ICC Reform Order*, 26 FCC Rcd at 17721-22, ¶146 n. 231. That decision was affirmed in the *USF/ICC Second Reconsideration Order*, where the Commission specifically declined to permit CAF Phase I funding of living units that are shown as served on the Map but actually not served. See *USF/ICC Reconsideration Order* at ¶ 13. To the extent CenturyLink disagrees with that approach, its avenue of relief is to seek reconsideration in the rulemaking proceeding, not a broad waiver such as is sought by the Petition.

⁹ See *USF/ICC Second Reconsideration Order*, at ¶¶ 14-15.

¹⁰ See Petition at 8-9.

to provide a viable broadband service to meet public demand. That is hardly surprising, since SpeedConnect's spectrum holdings in the area of Iowa in question are more than adequate to serve the needs of the public. In fact, while some WISPs may only be providing the 768 kbps down/200 kbps up service criticized by CenturyLink in the Petition,¹¹ SpeedConnect provides a 7 Mbps down/1 Mbps up service in the Iowa region in question, and has ample spectrum resources to both increase service speeds and expand its subscriber base in response to future marketplace developments.

Moreover, CenturyLink concedes that its waiver request cannot be justified by SpeedConnect's pricing. The Commission's *Report and Order* establishing the CAF Phase I program and adopting Section 54.312(b) of the Rules was clear and unambiguous in mandating that CAF Phase I funds are not to be used to deploy broadband service in areas already served by existing providers of broadband service:

all broadband buildout obligations for fixed broadband are conditioned on not spending the funds to serve customers in areas already served by an "unsubsidized competitor." We define an unsubsidized competitor as a facilities-based provider of residential terrestrial fixed voice and broadband service that does not receive high-cost support.¹²

The Commission did not adopt any requirement that the unsubsidized competitor price be below any threshold for the area to be considered served. CenturyLink certainly could have asked the Commission on reconsideration to modify this requirement to permit CAF Phase I funds to be used to overbuild high-cost service providers, but it did not. Rather, it now seeks what is, in effect, a further reconsideration of the *USF/ICC Second Reconsideration Order* by asking the Commission to permit CAF Phase I funded

¹¹ See *id.* at 8.

¹² *USF/ICC Reform Order*, 26 FCC Rcd at 17701, ¶ 103.

overbuilds of those WISPs that impose an aggregate charge of \$720 or more on new subscribers for the first year of service.¹³ SpeedConnect will leave it to others to address this element of the Petition, since SpeedConnect's first year charge of \$39.95 per month for its basic level of service and \$99 charge for installation is less than the arbitrary \$720 cut-off that CenturyLink advocates.¹⁴

Finally, CenturyLink suggests that certain of the areas served by competitors identified on Exhibit B (presumably including SpeedConnect) should be available for CAF Phase I funding because those competitors "impose highly restrictive data caps."¹⁵ Again, CenturyLink is effectively seeking further reconsideration of the *USF/ICC Second Reconsideration Order*. The rulemaking proceeding, not a waiver, is the correct place for the Commission to determine if an unsubsidized competitor's imposition of a data cap should open a served area to funding. Yet in the rulemaking proceeding, the Commission has just concluded that "we do not have an adequate record at this time to make a determination about how high a competitor's price must be—either alone or in combination with usage limits—before we would support overbuilding that competitor."¹⁶ More importantly, at least for present purposes, SpeedConnect does not impose a data cap. SpeedConnect offers two levels of service (and offers the same options whether or not the consumer residents in an area where SpeedConnect faces

¹³ See Petition at 11.

¹⁴ Exhibit B to the Petition shows a \$662.40 annual first year cost for SpeedConnect. Although not material given that this figure is less than the arbitrary \$720 benchmark CenturyLink appears to have pulled out of thin air, it should be noted as a matter of fact that SpeedConnect frequently discounts or entirely eliminated the installation charge so first year costs are often lower.

¹⁵ Petition at 11 n. 25.

¹⁶ *USF/ICC Second Reconsideration Order*, at ¶ 15.

competition). Its lowest price tier provides service at \$39.95 for the first 5 GB of service, with a \$2/GB charge for additional usage. This offering has proven quite popular with consumers, both in areas where SpeedConnect is the only provider and in areas where SpeedConnect competes with CenturyLink and/or others. For those consumers that anticipate regulatory consuming substantial bandwidth and desire a telephony service, SpeedConnect offers a \$69.95 package that provides a VoIP telephony service and 200 GB of bandwidth each month.

In short, the Petition fails to identify any justification for waiving Section 54.312(b) of the Rules. The Petition fails to carry CenturyLink's heavy burden as it relates to SpeedConnect's 2.5 GHz band service offerings in Iowa.

WHEREFORE, for the foregoing reasons, the Commission should dismiss CenturyLink's Petition with respect to SpeedConnect.

Respectfully submitted,

SPEEDCONNECT, LLC

By: /s/ Suzanne S. Goodwyn

Law Offices of Suzanne S. Goodwyn
1234 Tottenham Court
Reston, VA 20194
(703) 444-8804
goodwynlaw@verizon, net

July 12, 2012

DECLARATION OF JOHN OGREN

I, John Ogren, am Chief Executive Officer of SpeedConnect LLC ("SpeedConnect"). I have read the foregoing Opposition and hereby declare under penalty of perjury that the factual matters set forth therein regarding SpeedConnect and its service offerings are true and correct to the best of my information, knowledge and belief.



John Ogren
July 12, 2012